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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68148; File No. SR-OCC-2012-17)

November 2, 2012

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Margining of Segregated Futures Customer Accounts on a Gross Basis

I. Introduction

On September 14, 2012, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change SR-OCC-2012-17 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder.² The proposed rule change was published in the Federal Register on September 26, 2012.³ On October 11, 2012, OCC filed Amendment No. 1 to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ “Notice of Filing of Proposed Rule Change Relating to the Margining of Segregated Futures Customer Accounts on a Gross Basis,” Release No. 34-67896 (September 20, 2012), 77 FR 59231 (September 26, 2012).

the proposed rule change.⁴ The Commission did not receive any comments on this proposal. This order approves the proposed rule change.⁵

II. Description of the Proposed Rule Change

The purpose of this proposed rule change is to provide for the calculation of initial margin for OCC segregated futures customer accounts on a gross basis, as required by CFTC Rule 39.13(g)(8)(i).⁶

The CFTC's Customer Gross Margin Rule

On October 18, 2011, the CFTC issued final regulations implementing many of the new statutory core principles for CFTC-registered derivatives clearing organizations ("DCOs") enacted under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). As a registered DCO (as well as a registered securities clearing agency), OCC has previously implemented rule changes designed to bring OCC into compliance with CFTC rules applicable to DCOs that went into effect on January 9, 2012⁷

⁴ In Amendment No. 1, OCC proposed wording changes and responded to a CFTC interpretation concerning what constitutes initial margin. Specifically, it amended the text of Rule 601 by inserting the word "initial" before the word "margin," to more closely parallel CFTC Rule 39.13(g)(8)(i)⁴ which references "initial margin." It also amended Item 3 of Form 19b-4 to, first, include CFTC's definition of "initial margin" and second, to clarify which components of OCC's margin calculations meets the definition of "initial margin" as the term is defined under CFTC Rules. Amendment No. 1 is technical in nature, and therefore the Commission is not publishing Amendment No. 1 for public comment.

⁵ OCC also filed an advanced notice relating to these proposed changes. The advance notice was published on October 1, 2012. "Advance Notice Relating to the Margining of Segregated Futures Customer Accounts on a Gross Bases," Release No. 34-67921 (September 25, 2012), 77 FR 59998 (October 1, 2012). The Commission did not receive any comments on this publication.

⁶ 17 CFR 39.13(g)(8)(i).

⁷ See SR-OCC-2011-18.

and May 7, 2012.⁸ OCC believes it is necessary to amend its Rules in order to ensure compliance with the gross margin rule, which requires a DCO to “collect initial margin on a gross basis for each clearing member’s customer account(s) equal to the sum of the initial margin amounts that would be required by the derivatives clearing organization for each individual customer within that account if each individual customer were a clearing member”⁹ as required by CFTC Rule 39.13(g)(8)(i). The gross margin rule goes into effect on November 8, 2012; however, OCC proposed to begin complying with the gross margin rule on November 5, 2012 as described herein.

OCC’s System for Calculating Margin

OCC currently calculates margin requirements for each clearing member’s segregated futures customer account held at OCC on a net basis by applying OCC’s System for Theoretical Analysis and Numerical Simulations (“STANS”). STANS calculates initial margin with respect to each account of a clearing member, including each clearing member’s futures customer account(s), on a net basis. STANS includes both a net asset value (“NAV”) component and a risk component, with the risk component being the equivalent of “initial margin” as that term is defined under CFTC Rules. The NAV component marks all positions to market and nets long and short positions to determine the NAV of each clearing member’s portfolio of customer positions. The NAV component represents the cost to liquidate the portfolio at current prices by selling the net long positions and buying in the net short positions. The risk component is estimated by means of an expected shortfall risk measure obtained from “Monte Carlo” simulations designed to

⁸ See SR-OCC-2012-06.

⁹ Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69439 (November 8, 2011).

measure the additional asset value required in any portfolio to eliminate an unacceptable level of risk that the portfolio would liquidate to a deficit.

OCC presently lacks sufficient information about individual customer positions to calculate initial margin at the level of each individual customer. However, OCC has been coordinating with other DCOs to establish an industry-wide mechanism for complying with the customer gross margin rule. Pursuant to this new system, each DCO's clearing members will submit data files to the DCO identifying positions by numerical customer identifiers.¹⁰ OCC will use this information to calculate initial margins, using STANS, for each customer identifier of a clearing member and to aggregate those initial margin calculations to determine the total futures customer margin requirement for the clearing member's segregated futures customer account(s) held at OCC.¹¹ OCC will then compare the aggregate positions reported by each clearing member with its own records and make any needed adjustments to the initial margin calculation to ensure all positions on OCC's books are properly margined.

¹⁰ The position data provided to OCC by clearing members will not include (a) information with respect to the allocation of margin assets to particular customers, nor (b) information with respect to settlement obligations arising from the exercise, assignment or maturity of cleared contracts. For this reason, OCC will treat all margin assets and settlement obligations for each account to which the gross margin rule applies as being in sub-accounts of the Clearing Member. OCC will calculate margin, using STANS, separately for each sub-account and will aggregate the calculated margin requirements at the level of the clearing member's segregated futures customer account to which the sub-accounts relate.

¹¹ OCC currently carries the following account types that are segregated pursuant to Section 4d of the Commodity Exchange Act: Segregated Futures Accounts, Segregated Futures Professional Accounts, non-Proprietary X-M accounts, and internal non-proprietary cross-margining accounts. All such accounts would be margined on a gross basis under the proposed amendments to OCC Rule 601.

Proposed By-Law and Rule Changes

The proposed changes to OCC's Rules provide for the calculation of initial margin for segregated futures customer accounts on a gross basis and mandate submission of the clearing member data files necessary to allow OCC to calculate initial margin at the level of each futures customer. In the event that the data included in these data files is incomplete (for example, if OCC shows positions held in a clearing member's segregated futures accounts, but those positions are not reflected in the data file), OCC will create a separate sub-account to be used for initial margin calculation purposes only. Positions recorded on OCC's books and records, but not reflected in the data file, will be attributed to this sub-account and an initial margin amount will be calculated for the sub-account. This initial margin amount will be added to a clearing member's initial margin requirement. OCC has determined to adopt this approach to dealing with discrepancies between its own records and clearing member data files in order to ensure that OCC does not collect an inadequate amount of initial margin from clearing members.

III. Discussion of the Proposed Rule Change

Section 19(b)(2)(C) of the Exchange Act¹² directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Exchange Act¹³ requires that the rules of the clearing agency, among other things, are designed to promote the prompt and accurate clearance and settlement of securities

¹² 15 U.S.C. 78s(b)(2)(C).

¹³ 15 U.S.C. 78q-1(b)(3)(F).

transactions, and, to the extent applicable, derivative agreements, contracts, and transactions.

The Commission finds that the proposed rule change is consistent with the requirements of Section 17A of the Exchange Act¹⁴ because it is designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the CFTC without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest.

¹⁴ 15 U.S.C. 78q-1.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act¹⁵ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (File No. SR-OCC-2012-17) be and hereby is APPROVED¹⁷ as of the date of this order or the date of the “Notice of No Objection to Advance Notice Filing, as Modified by Amendment No. 1 Thereto, Relating to the Margining of Segregated Futures Customer Accounts on a Gross Basis” (File No. SR-2012-17), whichever is later.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

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Deputy Secretary

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¹⁵ 15 U.S.C. 78q-1.

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ In approving the proposed rule change, the Commission considered the proposal’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁸ 17 CFR 200.30-3(a)(12).